

(d) Any person who contests denial of an exemption shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.

[38 FR 28628, Oct. 15, 1973, as amended at 41 FR 48269, Nov. 2, 1976; 42 FR 15676, Mar. 22, 1977; 50 FR 7518, Feb. 22, 1985]

## **PART 1004—REPURCHASE, REPAIRS, OR REPLACEMENT OF ELECTRONIC PRODUCTS**

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AUTHORITY: 42 U.S.C. 263b-263n.

SOURCE: 38 FR 28629, Oct. 15, 1973, unless otherwise noted.

### **§ 1004.1 Manufacturer's obligation to repair, replace, or refund cost of electronic products.**

(a) If any electronic product fails to comply with an applicable Federal standard or has a defect and the notification specified in §1003.10(b) of this chapter is required to be furnished, the manufacturer of such product shall;

(1) Without charge, bring such product into conformity with such standard or remedy such defect and provide reimbursement for any expenses for transportation of such product incurred in connection with having such product brought into conformity or having such defect remedied; or

(2) Replace such product with a like or equivalent product which complies with each applicable Federal standard and which has no defect relating to the safety of its use; or

(3) Make a refund of the cost of the product to the purchaser.

(b) The manufacturer shall take the action required by this section in accordance with a plan approved by the Secretary pursuant to § 1004.6.

### **§ 1004.2 Plans for the repair of electronic products.**

Every plan for bringing an electronic product into conformity with applicable Federal standards or for remedying any defect in such product shall be submitted to the Secretary in writing, and in addition to other relevant information which the Secretary may require, shall include:

(a) Identification of the product involved.

(b) The approximate number of defective product units which have left the place of manufacture.

(c) The specific modifications, alterations, changes, repairs, corrections, or adjustments to be made to bring the product into conformity or remedy any defect.

(d) The manner in which the operations described in paragraph (c) will be accomplished, including the procedure for obtaining access to, or possession of, the products and the location where such operations will be performed.

(e) The technical data, test results or studies demonstrating the effectiveness of the proposed remedial action.

(f) A time limit, reasonable in light of the circumstances, for completion of the operations.

(g) The system by which the manufacturer will provide reimbursement for any transportation expenses incurred in connection with having such product brought into conformity or having any defect remedied.

(h) The text of the statement which the manufacturer will send to the persons specified in §1003.10(b) of this chapter informing such persons;

(1) That the manufacturer, at his expense, will repair the electronic product involved,

(2) Of the method by which the manufacturer will obtain access to or possession of the product to make such repairs,

(3) That the manufacturer will reimburse such persons for any transportation expenses incurred in connection with making such repairs, and

(4) Of the manner in which such reimbursement will be effected.

(i) An assurance that the manufacturer will provide the Secretary with progress reports on the effectiveness of

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the plan, including the number of electronic products repaired.

#### § 1004.3 Plans for the replacement of electronic products.

Every plan for replacing an electronic product with a like or equivalent product shall be submitted to the Secretary in writing, and in addition to other relevant information which the Secretary may require, shall include:

(a) Identification of the product to be replaced.

(b) A description of the replacement product in sufficient detail to support the manufacturer's contention that the replacement product is like or equivalent to the product being replaced.

(c) The approximate number of defective product units which have left the place of manufacture.

(d) The manner in which the replacement operation will be effected including the procedure for obtaining possession of the product to be replaced.

(e) A time limit, reasonable, in light of the circumstances for completion of the replacement.

(f) The steps which the manufacturer will take to insure that the defective product will not be reintroduced into commerce, until it complies with each applicable Federal standard and has no defect relating to the safety of its use.

(g) The system by which the manufacturer will provide reimbursement for any expenses for transportation of such product incurred in connection with effecting the replacement.

(h) The text of the statement which the manufacturer will send to the persons specified in §1003.10(b) of this chapter informing such persons;

(1) That the manufacturer, at its expense, will replace the electronic product involved,

(2) Of the method by which the manufacturer will obtain possession of the product and effect the replacement,

(3) That the manufacturer will reimburse such persons for any transportation expenses incurred in connection with effecting such replacement, and

(4) Of the manner in which such reimbursement will be made.

(i) An assurance that the manufacturer will provide the Secretary with progress reports on the effectiveness of

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the plan, including the number of electronic products replaced.

#### § 1004.4 Plans for refunding the cost of electronic products.

Every plan for refunding the cost of an electronic product shall be submitted to the Secretary in writing, and in addition to other relevant information which the Secretary may require, shall include:

(a) Identification of the product involved.

(b) The approximate number of defective product units which have left the place of manufacture.

(c) The manner in which the refund operation will be effected including the procedure for obtaining possession of the product for which the refund is to be made.

(d) The steps which the manufacturer will take to insure that the defective products will not be reintroduced into commerce, until it complies with each applicable Federal standard and has no defect relating to the safety of its use.

(e) A time limit, reasonable in light of the circumstances, for obtaining the product and making the refund.

(f) A statement that the manufacturer will refund the cost of such product together with the information the manufacturer has used to determine the amount of the refund.

(g) The text of the statement which the manufacturer will send to the persons specified in §1003.10(b) of this chapter informing such persons;

(1) That the manufacturer, at his expense, will refund the cost of the electronic product plus any transportation costs,

(2) Of the amount to be refunded exclusive of transportation costs,

(3) Of the method by which the manufacturer will obtain possession of the product and make the refund.

(h) An assurance that the manufacturer will provide the Secretary with progress reports on the effectiveness of the plan, including the number of refunds made.

#### § 1004.6 Approval of plans.

If, after review of any plan submitted pursuant to this subchapter, the Secretary determines that the action to be

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taken by the manufacturer will expeditiously and effectively fulfill the manufacturer's obligation under §1004.1 in a manner designed to encourage the public to respond to the proposal, the Secretary will send written notice of his approval of such plan to the manufacturer. Such approval may be conditioned upon such additional terms as the Secretary deems necessary to protect the public health and safety. Any person who contests denial of a plan shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to part 16 of this chapter.

[38 FR 28629, Oct. 15, 1973, as amended at 41 FR 48269, Nov. 2, 1976; 42 FR 15676, Mar. 22, 1977]

### PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

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AUTHORITY: 42 U.S.C. 263d, 263h.

SOURCE: 38 FR 28630, Oct. 15, 1973, unless otherwise noted.

#### Subpart A—General Provisions

##### § 1005.1 Applicability.

(a) The provisions of §§1005.1 through 1005.24 are applicable to electronic products which are subject to the standards prescribed under this subchapter and are offered for importation into the United States.

(b) Section 1005.25 is applicable to every manufacturer of electronic products offering an electronic product for importation into the United States.

[38 FR 28630, Oct. 15, 1973, as amended at 45 FR 81739, Dec. 12, 1980]

##### § 1005.2 Definitions.

As used in this part:

The term *owner* or *consignee* means the person who has the rights of a consignee under the provisions of sections 483, 484, and 485 of the Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484, 1485).

##### § 1005.3 Importation of noncomplying goods prohibited.

The importation of any electronic product for which standards have been prescribed under section 534 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360kk) shall be refused admission into the United States unless there is affixed to such product a certification in the form of a label or tag in conformity with section 534(h) of the act (21 U.S.C. 360kk(h)). Merchandise refused admission shall be destroyed or exported under regulations prescribed by the Secretary of the Treasury unless a timely and adequate petition for permission to bring the product into compliance is filed and granted under §§ 1005.21 and 1005.22.

[69 FR 11314, Mar. 10, 2004]

#### Subpart B—Inspection and Testing

##### § 1005.10 Notice of sampling.

When a sample of a product to be offered for importation has been requested by the Secretary, the District Director of Customs having jurisdiction over the shipment shall, upon the arrival of the shipment, procure the sample and shall give to its owner or consignee prompt notice of the delivery or of the intention to deliver such sample to the Secretary. If the notice so requires, the owner or consignee will hold the shipment of which the sample is typical and not release such shipment until he receives notice of the results of the tests of the sample from the Secretary, stating that the product is in compliance with the requirements of the Act. The District Director of